



NCHERM

THE NATIONAL CENTER FOR HIGHER EDUCATION RISK MANAGEMENT
BEST PRACTICES FOR STUDENT HEALTH AND SAFETY

COURSE MATERIALS:

THE ATIXA/NCHERM CIVIL RIGHTS INVESTIGATION TRAINING SCHOOL

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SEXUAL HARASSMENT -- DISCUSSION SCENARIOS

Sexual Harassment – Or – Not?

1. When Kathy did her class presentation several of the men in the class made sexually suggestive remarks loud enough for the rest of the class to hear.
2. Ben made friends with Sue, another student, in his History class. Sue has been calling Ben a lot and recently has begun talking to him about how much she cares for him. She has been waiting outside his classroom and “appears” near him all around campus.
3. Beth’s student work-study job is to clean the locker rooms after hours. Beth is offended by the pictures of naked men and women that students have taped to their lockers.
4. Joe hangs out in the student union and is constantly surrounded by students telling off-color jokes or making sexually explicit remarks. He gets so upset he can’t eat or study there.

What are the significant issues in these mini-cases?

1. Barb and Bob have been dating for a couple weeks. They go to a concert and have drinks after. In fact, they have quite a few drinks and Bob invites Barb back to his place for a “night cap”. Once there Barb becomes very affectionate and begins kissing Bob and putting her hands under his shirt. Bob knows Barb is a virgin and plans to stay that way until she’s engaged, so he gently pushes her away. Barb acts very hurt and accuses Bob of not caring about her. Bob asks if she’s sure she wants to go forward and she assures him she does. They make love and fall asleep. The following morning Bob awakens and begins fondling Barb and as she awakens she is horrified to discover that she is naked and being fondled. She grabs her clothes and leaves then files a discipline charge against Bob for fondling her.
2. Stan met Liz at a college social event and agreed to come to a party at her apartment. Stan and Liz are very attracted to each other and there are “sparks” between them all evening. Stan waits until everyone else leaves and begins kissing Liz. Liz is very excited, but does not want to have sex on the first date and scare Stan away so she provides manual gratification to Stan. Stan interprets this as foreplay in anticipation of sexual intercourse so he proceeds further by picking Liz up and carrying her to the bed and undressing her. Liz does not stop him, but she no longer participates either. Liz does not respond to Stan during their sexual intercourse. Liz tells her best friend, Audrey, who becomes concerned about her as she watches Liz withdraw socially and become depressed. Audrey tells the campus discipline officer.

3. One day Rob receives an e-mail labeled "You turn me on" from an unidentified source. Rob is curious about who sent it. Recently he has been receiving phone calls and the caller hangs up. Rob is dating several women, but is not intimate with any of them. The following day Rob receives another anonymous e-mail telling him how "hot" he is and describing, in detail, his physical attributes. Rob realizes the e-mail is likely coming from one of the guys on the floor of his dorm because they have gang showers and no one else would know some of the details related in the e-mail. A couple of days later Mark, who lives down the hall, stops by Rob's room and asks if he would like to play tennis. Mark and Rob develop a friendship but the e-mails continue coming and Rob thinks they are from Mark. Rob is becoming very uncomfortable and his grades are suffering.

ADDITIONAL CASE STUDIES***The Case of Anne: SEXUAL ASSAULT***

Anne, a student at Citron College was an ardent basketball fan. Last term she attended a basketball game with a group of friends. At the game she met three young men who were fraternity brothers. Anne had friendly conversations with the men, who shared a container of rum and coke with her.

The young men invited Anne and her friends back to the fraternity house for the post-game party and talk about the "big win", but her friends declined and Anne decided to go with the young men. The party lasted for hours, and a considerable amount of alcohol was consumed by everyone, including Anne.

Anne eventually accompanied the three men to their upper floor room for further conversation, and to listen to music. She continued to drink alcohol there, and became so intoxicated that she occasionally "passed out" for several minutes at a time. Anne contends she was raped by the three men while she was not fully conscious.

Anne left the fraternity house early in the morning to return to her dorm. She did not call the police or seek medical attention. Ten days later, she described the incident to a friend who convinced her to file a report with the Dean of Student's office at the college.

During follow-up interviews two of the three men denied having any sexual contact with Anne. The third admitted having sex with her, but stated it was "definitely consensual" and that Anne was fully conscious during the time.

All three men were charged with sexual assault. A lawyer representing all three men wrote the Dean stating that the charges by the college must be dropped because there were pending criminal charges and that would place the men in double jeopardy.

Anne does not want to testify at the conduct hearing if it means she will have to confront the three men, but she is willing to submit a written statement.

- What are the issues?
- What do you need to know?
- Who do you need to hear from?

The Case of Jeff: SEXUAL MISCONDUCT

Jeff is a graduate student in your department and has been spending a lot of time in and around the office because he has developed a crush on one of the undergraduate student workers, Sally. Sally and Jeff have a romantic fling and because of your relationship with Sally she has kept you informed of the progress of the affair. Sally looks to you as her mentor as well as her supervisor.

Recently Jeff and Sally spent a long holiday weekend together and since that time her behavior has changed. She is not her same perky, upbeat self. When you ask her what's up, she reports that Jeff was a real animal during their weekend away. She says it became clear to her that his only interest in her was physical, and she is very uncomfortable with him now. Jeff is a highly valued teaching assistant in your department and it would be a huge loss if he left. Sally says she has tried to talk to Jeff about her feelings and his response was to become angry and verbally abusive. She says she feels trapped and isolated working in the department and seeing Jeff every day. Sally has applied for a graduate assistantship in your department for next year and she would be a terrific asset to the department, but now she says she may not accept the offer because of this situation.

- What are the issues?
- Is this sexual harassment?
- What approach should you take with Jeff?
- What are Sally's rights?

The Case of Susan: SEXUAL MISCONDUCT

Susan is a female student, living off campus. She has a relationship with a male student, Steve in her class. Susan never considers the relationship to be a serious one, but Steve does. Susan sees this and breaks off the relationship. Steve begins an escalating campaign of phone calls, e-mails, and confrontations. Susan feels harassed at first but as the behavior continues and the e-mails become more ominous Susan becomes very concerned. Steve says Susan is mentally ill and needs help and he is the only one who can help her. If she resists, Steve says, her life may be in danger. Last night someone broke into Susan's apartment, covered her eyes and raped her. Susan is certain it was Steve. She reports this to the campus Women's Center.

- What do you need to know?
- What do you need to ask?
- Who do you need to involve?

"KYLE CRAFT v. TODD MARTIN" ALLEGATION OF SEXUAL MISCONDUCT

Todd Martin, the respondent, a second-year student;

Kyle Craft, the complainant, a first-year student;

Lt. Discov, the campus police investigator, a fact witness who is not testifying for either side.

The bullet points below represent the only points, if at all, where Kyle's version of events differs from those contained in the statement on Todd, below.

STATEMENT OF TODD MARTIN

On the night of Friday, September 13th, I went to an on-campus party. There was a band, and a lot of alcohol. I got to the party at about 11:00pm, and slammed about three beers in the first hour I was there. It was very crowded, and people were dancing. A lot of people already seemed to be drunk. I hung out around the dance floor with my friend Jeff Kwik for a while, until I noticed Kyle Craft dancing. He was really cute, and I had noticed him on campus a few times. I went up to him and we started talking. He seemed a little tipsy and in a pretty loose mood. We talked for a while, and I think I got him about two or three beers over the next hour. I didn't have anything more to drink because the three beers I slammed were doing the trick just fine. Around 1:00am, somebody started passing out Jell-O shots spiked with grain alcohol. I didn't want to mix beer and liquor, but Kyle had a few shots. We danced a lot, and then I got him a few more Jell-O shots. He went off to the bathroom, and after that I couldn't find him, and that really bummed me out. I waited around to see if he would show up again, but he didn't. I took off and started to walk back to my residence hall. As I left the party, I heard someone vomiting. I looked over and saw Kyle in the bushes, throwing up. I went over to help him, and he seemed to be in pretty bad shape. I offered to take him home, and he told me where his dorm was and leaned on my arm. When we got to his dorm, I helped him inside, and was about to leave, but he asked me to come up to his room, just to make sure he got there. I took him upstairs, opened the door for him, and let him in. He asked me to get him a glass of water, and I did. I started to take off again, but he asked me not to go. When I turned around,

he kissed me, hard. We kissed for a while, but he wasn't feeling well, and went into the bathroom. When he came out, he said he felt better, but tired. We crashed on the couch and kissed some more. I started to massage his back, and he passed out. He came to about 20 minutes later, and started to kiss me, and fondle me. He took off my shirt, and all of my clothes. I started to kiss him all over, and he said he needed some rest. I asked him if he was okay, and he said he was. I asked him if he had a condom, and he said he had one in his dresser. I went to get it, and when I got back to the couch, he was unconscious again. He woke up after about 20-30 minutes, and I suggested that he just go to sleep. But, he said he felt much better, and started to give me oral sex. After a while, he put the condom on me and we had sex. It was great. He was really wild, and liked to be on top. Afterward, we talked until the early morning, and I gave him my number and left. The next day, he called me to ask me why my name was on the pad by his sofa. I told him about meeting him at the party, and about our evening together. He seemed to get upset, and said he remembered meeting me at the party, but almost nothing else. I asked if he ever wanted to get together again, and he hung up on me. Two days later, I was notified by the Dean that Kyle filed a complaint against me, and here I am.

The facilitator may offer the following as facts, opinions and/or circumstances at the hearing, when questioned by the hearing board:

- Todd knew that Kyle was pretty drunk, though Todd was unsure of how much Kyle had.
- Todd remembered that when Kyle went into the bathroom in his room, he came back smelling like he had just brushed his teeth.
- Todd believes Kyle was fully alert and conscious during the sex. He had been feeling bad, but Todd thought Kyle threw up a lot of the alcohol. Kyle kind of passed out/went to sleep twice when they were fooling around, but after the second time, Kyle seemed to be feeling much better.
- Kyle initiated all the sexual contact with Todd, put the condom on him with no difficulty (like he had done so before), and was active and participant in the sex, both physically and verbally.
- Todd drinks frequently and copiously. He has a high tolerance for alcohol.
- It takes at least eight beers to get him really drunk.
- Todd had a full stomach when he got to the party.
- He did not drug Kyle.
- Todd served Kyle at least two beers and four Jell-O shots over three hours. Kyle believes he consumed four or five beers, and at least two Jell-O shots.
- Todd did not bring his own condom. He used Kyle's, which was in his dresser. He told Todd it was there.
- In Todd's opinion, Kyle was not incapacitated.
- Todd left Kyle's room at 6:00am.
- Physical evidence in the form of PERK results proved sex with Todd.
- There were no signs of any illegal drugs in Kyle's system.
- Kyle had a condom in his dresser and now it is gone. He does not recall telling Todd that it was there.
- Kyle recalls throwing up in the bathroom, but does not recall brushing his teeth.

- Kyle does not recall putting the condom on Todd, or any sexual activity with Todd, or talking with him afterward.
- Kyle has been drunk before, but nothing like this has ever happened.
- Kyle called the police station at 1:30pm on Saturday, September 14th. His call was referred to Lt. Discov.
- Lt. Discov noted that Kyle is experiencing bad dreams and eating disturbances that he believes are consistent with those of others who have experienced significant trauma.
- Lt. Discov refers to Kyle's condition as "black time." He asserts that it is possible for students to consume enough alcohol that they black out, mentally, but not physically. It would explain why Kyle recalls nothing, but Todd says he was an active participant.
- Neither party has a criminal or disciplinary record.

choose with whom they will engage in sex. Even if a man or woman is very sexually active, their consent is not assumed. By the way, isn't it interesting that most people never thought of this scene at the end of the movie "Pretty Woman" as an attempted rape!

- 7) Suppose that Angelica and Jack have been dating for several years. Over that period of time, they have come to know each other very well, and have established non-verbal patterns of sexual communication that suit them well. For example, among other habits, Jack knows that if Angelica puts on her green nightgown before bed, she wants to have sex with him. If she wears her pink nightgown, she does not want to have sex with him. For three years, they communicate sexually in this manner, which works just fine for them. Late one night in the fourth year of their relationship, Angelica heads off to bed before Jack. Realizing that her pink nightgown is in the laundry, she puts on her green nightgown. She knows that Jack might assume the wrong thing, but she has nothing else to wear, and she figures she'll be asleep by the time Jack goes to bed, so he'll know that she is not really interested. Jack comes to bed, and sees that Angelica has on her green nightgown. He knows what this means. He thinks it will be romantic to wake Angelica up by beginning to have sex with her (as this has been the case with them in the past). When he does this, Angelica is so annoyed that she breaks up with him and kicks him out. She also charges him with Non-Consensual Sexual Intercourse, arguing that he did not have "mutually understandable" consent from her, and that she was incapacitated at the time because she was asleep. Is Jack responsible for a policy violation? *No. But, this was uninformed, and not freely given. However, we must recognize that the rules for consent may be altered by long-term relationships. The rules for consent are default rules for people who do not have established patterns of sexual communication. Jack and Angelica have essentially replaced "mutually understandable" consent rules with their own rules. Most couples do over time. In such cases, if it can be established that Jack has relied on this type of communication for three years, it is not fair of Angelica to change the rules on him midstream without letting him know. There must still be consent for sex in long-term relationships, but couples have a way of expressing that consent through subtle cues and mannerisms that are mutually understandable to them, but maybe not to anyone else. What about the incapacitation argument? Angelica was incapacitated, but she had allowed this sort of behavior before with Jack, and he was entitled to rely on the rules they had established, until Angelica informed him to the contrary. Read the definition carefully, it covers this type of situation in the discussion of the objectivity/subjectivity of mutual understandability.*
- 8) Demi and Bruce met at a movie. They started to date on and off. One night, Demi and Bruce went out drinking. After the bars closed, they went to Demi's dorm room. Demi was very drunk, and engaged in sex with Bruce, despite his protests. Bruce was not as drunk as Demi. Demi argues that even if she might have had nonconsensual sex with Bruce, it's not her fault because of how drunk she was. She believes she was so drunk she didn't even know she was having sex with him, let alone that it was something he didn't want. Is this a policy violation? *Yes, intoxication (even to the point of incapacity)*

of an initiating party is no excuse for violation of the sexual misconduct policy. If it were, drunk people could be excused for drunk driving, because they were so drunk they didn't realize they were driving. Further, sexual misconduct is not intent-based. Whether or not Demi intended to commit a violation of the Non-Consensual Sexual Intercourse policy is irrelevant. The fact that she had sex with him without his consent is sufficient to satisfy the elements of the offense. This is a good place for a reminder about resistance. None is required under this policy, and that is as true for when a man is the aggressor, as for when it is a woman. Did you use the incapacity tables for this case? Did they help?

- 9) Tommy had consensual sex with Pam, a student he met in Geology lab, after which she drank a large amount of alcohol. She passed out on Tommy's bed and Tommy left her to sleep it off. He headed out to a fraternity party. He got drunk with his brothers, and they were vocally complaining about how hard it is to "get laid" on campus. Tommy told them he had a sure thing for them. He told them that Pam was passed out on his bed, and wouldn't remember a thing. Tommy gave them the keys to his room, and the four fraternity brothers had sexual intercourse with the unconscious Pam. Tommy stayed at the party and was not present during the incident. Is Tommy responsible for any policy violation? *Yes, Tommy is responsible for several violations. He is violated the Non Consensual Sexual Intercourse policy as an accomplice, for aiding in the violation of Pam. He is also responsible for violation of the sexual exploitation policy, for going beyond the bounds of the consent Pam gave to him. Oh, and the four fraternity brothers? They're expelled.*

- 10) John is a junior at the College of Knowledge. Jodie is a sophomore. John comes to Jodie's dorm room with some mutual friends to watch a movie. John and Jodie, who have never met before, are attracted to each other. After the movie, everyone leaves, and John and Jodie are alone. They hit it off, and are soon becoming more intimate. They start to make out. John verbally expresses his desire to have sex with Jodie. Jodie, who was abused by a baby-sitter when she was five, and has not had any sexual relations since, is shocked at how quickly things are progressing. As John takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with her, Jodie has a severe flashback to her childhood trauma. She wants to tell John to stop, but cannot. Jodie is stiff and unresponsive during the intercourse. Is this a policy violation? *John would be held responsible in this scenario for Non Consensual Sexual Intercourse. It is the duty of the sexual initiator, John, to make sure that he has mutually understandable consent to engage in sex. Though consent need not be verbal, it is the clearest form of consent. Here, John had no verbal or non-verbal mutually understandable indication from Jodie that she consented to sexual intercourse. Of course, wherever possible, students should attempt to be as clear as possible as to whether or not sexual contact is desired, but students must be aware that for psychological reasons, or because of alcohol or drug use, one's partner may not be in a position to provide as clear an indication as the policy requires. As the policy makes clear, consent must be actively, not passively, given.*